IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10156 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUNIL ALIAS BABA ULLASHRAVO DESHMUKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/03/2000

ORAL JUDGEMENT

1. Commissioner of Police, Baroda City, Baroda, passed an order on September 6, 1999, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the present petitioner under the provisions of the said Act.

2. The grounds of detention indicate that the

detaining authority took into consideration one prohibition case registered against the detenu and statements of three anonymous witnesses recorded by the sponsoring authority on 4th and 5th August, 1999. The detaining authority was satisfied that the detenu is a bootlegger, as contemplated under the provisions of the PASA Act. The authority considered possibility of resorting to less drastic remedy and came to a conclusion that detention under PASA Act is the only remedy in order to immediately prevent the detenu from continuing his illegal anti-social activities.

3. The petitioner challenges the order of detention on various counts in this petition under Article 226 of the Constitution of India. However, learned advocate appearing for the petitioner, Mr. Patel, has restricted his argument on the ground of delay in passing the order. Mr. Patel submitted that the statements were verified on 7th August, 1999 and the order of detention came to be passed on 6th September, 1999. Mr. Patel, therefore, submitted that the satisfaction of the detaining authority for the need for exercising powers under Section 3(2) of the PASA Act for "immediately preventing the petitioner from continuing illegal and anti-social activities" cannot be said to be genuine. The petition, therefore, may be allowed.

4. Learned Assistant Government Pleader, Mr. K.T. Dave, has opposed this petition. He submitted that procedural delay may be taken into consideration by this Courts while considering the question of delay in passing the order.

5. Considering rival side contentions, it is clear that the statements recorded on 4th and 5th August, 1999, they were verified by the detaining authority on 7th August, 1999 and the order of detention came to be passed, after one month, on 6th September, 1999. The detaining authority has recorded a subjective satisfaction for the need for immediately preventing the petitioner from continuing his activities. If the detaining authority, after verifying the statements, takes one month in passing the order, it will have an adverse bearing on the genuineness of the subjective satisfaction recorded by the detaining authority for the immediate need for preventing the detenu from continuing his illegal activities. The satisfaction of the detaining authority about detention under PASA Act being only efficacious remedy available as compared to less drastic remedies available for preventing the detenu from continuing his activities will also be affected. As

such, after verifying the statements, only order is required to be passed. There is no justification for lapse of one month in passing the order. No affidavit in reply is filed by of the respondents. No attempt is made by the detaining authority to explain the delay in passing the order. The procedural delay, argued by Mr. K.T. Dave, has also not been tried to be explained by the detaining authority and it only remains an attempt on part of the learned Assistant Government Pleader to explain the delay, though unsuccessful. This gross delay would vitiate the genuineness of the subjective satisfaction and, in turn, the order. The petition, therefore, deserves to be allowed on this count alone.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated September 6, 1999 is hereby quashed. The detenu-Sunil alias Baba Ullashravo Deshmukh is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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